

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

In Re:

BRYAN L. TRAVIS,

Petitioner.

No. 07-4263
(D.C. No. 2:05-CV-269-DB-DN)
(D. Utah)

ORDER
Filed January 3, 2008

Before **HENRY**, Chief Judge, **O'BRIEN**, and **HOLMES**, Circuit Judges.

Bryan Travis, proceeding pro se, seeks a writ of mandamus directing Magistrate Judge David Nuffer and District Judge Dee Benson to recuse from his pending civil action. Mr. Travis filed a motion to recuse in district court, which both judges denied. Mandamus is an appropriate vehicle to challenge the denial of a motion to recuse. *Nichols v. Alley*, 71 F.3d 347, 350 (10th Cir. 1995) (per curiam). On appeal, a district court's denial of a motion to recuse is reviewed for an abuse of discretion, but on mandamus, a petitioner "must demonstrate a clear abuse of discretion, or conduct by the district court amounting to a usurpation of judicial authority." *Id.* "Mandamus is available only upon a showing of a clear and indisputable right to relief." *Id.*

In his mandamus petition, Mr. Travis argues that Judge Benson and Magistrate Judge Nuffer are biased against him based on the following: Judge Benson's treatment of his motion for summary judgment, Judge Benson's refusal to allow him to amend his complaint, Judge Benson's limitations on discovery, Magistrate Judge Nuffer's refusal to require the defendants to answer his Rule 36 admissions, and the defendants' alleged ability to have more discovery than he has been granted. In his supplement to his mandamus petition, he complains about Judge Benson's denial of his recusal motion and Magistrate Judge Nuffer's denial of his request for additional discovery.

Mr. Travis' allegations, which are based on adverse rulings, are not sufficient to demonstrate bias or prejudice on the part of either of these judges. *See, e.g., United States v. Cooley*, 1 F.3d 985, 993-94 (10th Cir. 1993).

Accordingly, we conclude that Mr. Travis has not met his burden of demonstrating his entitlement to mandamus relief. The petition for a writ of mandamus is DENIED. Mr. Travis' motion to proceed in forma pauperis is DENIED.

Entered for the Court

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker". The signature is written in dark ink and includes a long, sweeping horizontal line at the end.

ELISABETH A. SHUMAKER, Clerk